

106TH CONGRESS  
1ST SESSION

# H. R. 3112

To amend the Colorado Ute Indian Water Rights Settlement Act to provide for a final settlement of the claims of the Colorado Ute Indian Tribes, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 20, 1999

Mr. McINNIS introduced the following bill; which was referred to the Committee on Resources

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## A BILL

To amend the Colorado Ute Indian Water Rights Settlement Act to provide for a final settlement of the claims of the Colorado Ute Indian Tribes, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; FINDINGS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Colorado Ute Settlement Act Amendments of 1999”.

6       (b) FINDINGS.—Congress finds that—

7               (1) in order to provide for a full and final set-  
8       tlement of the claims of the Colorado Ute Indian  
9       Tribes on the Animas and La Plata Rivers, the

1 Tribes, the State of Colorado, and certain of the  
2 non-Indian parties to the Agreement have proposed  
3 certain modifications to the Colorado Ute Indian  
4 Water Rights Settlement Act of 1988;

5 (2) the claims of the Colorado Ute Indian  
6 Tribes on all rivers in Colorado other than the  
7 Animas and La Plata Rivers have been settled in ac-  
8 cordance with the provisions of the Colorado Ute In-  
9 dian Water Rights Settlement Act of 1988;

10 (3) the Indian and non-Indian communities of  
11 southwest Colorado and northwest New Mexico will  
12 be benefited by a settlement of the tribal claims on  
13 the Animas and La Plata Rivers that provides the  
14 Tribes with a firm water supply without taking  
15 water away from existing uses;

16 (4) the Agreement contemplated a specific time-  
17 table for the delivery of irrigation and municipal and  
18 industrial water and other benefits to the Tribes  
19 from the Animas-La Plata Project, which timetable  
20 has not been met. The provision of irrigation water  
21 cannot presently be satisfied under the current im-  
22 plementation of the Federal Water Pollution Control  
23 Act (33 U.S.C. 1251–1387) and the Endangered  
24 Species Act of 1973 (16 U.S.C. 1531–1534);

1           (5) in order to meet the requirements of the  
2           Endangered Species Act of 1973, and in particular  
3           the various biological opinions issued by the Fish  
4           and Wildlife Service, this Act provides for a signifi-  
5           cant reduction in the facilities and water supply con-  
6           templated under the Agreement;

7           (6) the substitute benefits provided to the  
8           Tribes under this Act, including the waiver of capital  
9           costs and the provisions of funds for natural re-  
10          source enhancement result in a settlement that pro-  
11          vides the Tribes with benefits that are equivalent to  
12          those that the Tribes would have received under the  
13          Colorado Ute Indian Water Rights Settlement Act of  
14          1988; and

15          (7) the requirement that the Secretary of the  
16          Interior comply with the National Environmental  
17          Policy Act of 1969 and other national environmental  
18          laws before implementing the proposed settlement  
19          will ensure that the satisfaction of the tribal water  
20          rights is accomplished in an environmentally respon-  
21          sible fashion.

22 **SEC. 2. DEFINITIONS.**

23          In this Act:

24                (1) AGREEMENT.—The term “Agreement” has  
25          the meaning given that term in section 3(1) of the

1 Colorado Ute Indian Water Rights Settlement Act of  
2 1988 (Public Law 100–585).

3 (2) ANIMAS-LA PLATA PROJECT.—The term  
4 “Animas-La Plata Project” has the meaning given  
5 that term in section 3(2) of the Colorado Ute Indian  
6 Water Rights Settlement Act of 1988 (Public Law  
7 100–585).

8 (3) DOLORES PROJECT.—The term “Dolores  
9 Project” has the meaning given that term in section  
10 3(3) of the Colorado Ute Indian Water Rights Set-  
11 tlement Act of 1988 (Public Law 100–585).

12 (4) TRIBE; TRIBES.—The term “Tribe” or  
13 “Tribes” has the meaning given that term in section  
14 3(6) of the Colorado Ute Indian Water Rights Set-  
15 tlement Act of 1988 (Public Law 100–585).

16 **SEC. 3. AMENDMENTS TO SECTION 6 OF THE COLORADO**  
17 **UTE INDIAN WATER RIGHTS SETTLEMENT**  
18 **ACT OF 1988.**

19 (a) RESERVOIR; MUNICIPAL AND INDUSTRIAL  
20 WATER.—Section 6(a) of the Colorado Ute Indian Water  
21 Rights Settlement Act of 1988 (Public Law 100–585) is  
22 amended to read as follows:

23 “(a) RESERVOIR; MUNICIPAL AND INDUSTRIAL  
24 WATER.—

1           “(1) IN GENERAL.—In order to settle the out-  
2           standing claims of the Tribes on the Animas and La  
3           Plata Rivers, the Secretary, acting through the Bu-  
4           reau of Reclamation, is authorized to:

5                   “(A) complete construction of, operate, and  
6                   maintain a reservoir, a pumping plant, a res-  
7                   ervoir inlet conduit, and appurtenant facilities  
8                   with sufficient capacity to divert and store  
9                   water from the Animas River to provide for an  
10                  average annual depletion of 57,100 acre feet of  
11                  water to be used for a municipal and industrial  
12                  water supply, which facilities shall—

13                       “(i) be designed and operated in ac-  
14                       cordance with the hydrologic regime nec-  
15                       essary for the recovery of the endangered  
16                       fish of the San Juan River as determined  
17                       by the San Juan River Recovery Imple-  
18                       mentation Program;

19                       “(ii) include an inactive pool of an ap-  
20                       propriate size to be determined by the Sec-  
21                       retary following the completion of required  
22                       environmental compliance; and

23                       “(iii) include those recreation facilities  
24                       determined to be appropriate by agreement  
25                       between the State of Colorado and the Sec-

retary, which agreement shall address the payment of any of the costs of such facilities by the State of Colorado in addition to the costs described in (B)(iii); and

“(B) deliver through the use of the project components referred to in subparagraph (A), the following municipal and industrial water allocations:

“(i) To the Southern Ute Indian Tribe, with an average annual depletion not to exceed 16,525 acre-feet of water for its present and future needs.

“(ii) To the Ute Mountain Ute Indian Tribe, with an average annual depletion not to exceed 16,525 acre-feet of water for its present and future needs.

“(iii) To the Navajo Nation, with an average annual depletion not to exceed 2,340 acre-feet of water.

“(iv) To the San Juan Water Commission, with an average annual depletion not to exceed 10,400 acre-feet of water.

“(v) To the Animas-La Plata Conservancy District, with an average annual de-

1                   pletion of an amount not to exceed 2,600  
2                   acre-feet of water.

3                   “(vi) To the State of Colorado, with  
4                   an average annual depletion of an amount  
5                   not to exceed 5,230 acre-feet of water.

6                   “(vii) To the La Plata Conservancy  
7                   District of New Mexico, with an average  
8                   annual depletion of an amount not to ex-  
9                   ceed 780 acre-feet of water.

10                  “(2) APPLICABILITY OF OTHER FEDERAL  
11                  LAW.—The responsibilities of the Secretary de-  
12                  scribed in paragraph (1) are subject to the require-  
13                  ments of the Federal statutes related to the protec-  
14                  tion of the environment and otherwise applicable to  
15                  the construction of the proposed facilities, including  
16                  but not limited to the National Environmental Pol-  
17                  icy Act of 1969, the Federal Water Pollution Con-  
18                  trol Act, and the Endangered Species Act of 1973.  
19                  Nothing in this Act is intended to predetermine or  
20                  otherwise affect the outcome of any analysis con-  
21                  ducted under applicable statutes.

22                  “(3) LIMITATION ON USE WITH OTHER FACILI-  
23                  TIES.—If constructed, the facilities described in  
24                  paragraph (1)(A) shall not be used in conjunction  
25                  with any other facility authorized as part of the

1 Animas-La Plata Project without express authoriza-  
2 tion from Congress.

3 “(4) TRIBAL CONSTRUCTION COSTS.—Construc-  
4 tion costs of the facilities described in paragraph  
5 (1)(A) required to deliver each tribe’s municipal and  
6 industrial water allocation under clauses (i), (ii), and  
7 (iii) of paragraph (1)(B) shall not be reimbursable  
8 to the United States.

9 “(5) NONTRIBAL WATER CAPITAL OBLIGA-  
10 TIONS.—In lieu of a repayment contract under sec-  
11 tion 9 of the Reclamation Project Act of 1939 (43  
12 U.S.C. 485h), the nontribal municipal and industrial  
13 water capital repayment obligations for the facilities  
14 described in paragraph (1)(A) may be satisfied upon  
15 the payment in full of the nontribal water capital ob-  
16 ligations prior to the initiation of construction. The  
17 amount of those obligations shall be determined by  
18 agreement between the Secretary of the Interior and  
19 each of the San Juan Water Commission, the La  
20 Plata Conservancy District, the Animas-La Plata  
21 Conservancy District, and the State of Colorado as  
22 to the appropriate reimbursable share of the con-  
23 struction costs allocated to that entity’s municipal  
24 water supply and shall take account that the con-  
25 struction of facilities to provide irrigation water sup-



1       plies from the Animas-La Plata Project is not au-  
2       thorized under subsection (1)(A) and no costs asso-  
3       ciated with the design or development of such facili-  
4       ties, including environmental compliance, shall be al-  
5       locable to the municipal and industrial users of the  
6       facilities authorized under subsection (1)(A).

7               “(6) TRIBAL WATER ALLOCATIONS.—

8               “(A) IN GENERAL.—With respect to mu-  
9       nicipal and industrial water allocated to a Tribe  
10      from the Animas-La Plata Project or the Dolores  
11      Project, until that water is first used by a  
12      Tribe or pursuant to a water use contract with  
13      the Tribe, the Secretary shall pay the annual  
14      operation, maintenance, and replacement costs  
15      allocable to that municipal and industrial water  
16      allocation of the Tribe.

17              “(B) TREATMENT OF COSTS.—A Tribe  
18      shall not be required to reimburse the Secretary  
19      for any payment made under subparagraph (A).

20              “(7) REPAYMENT OF PRO RATA SHARE.—As an  
21      increment of a municipal and industrial water alloca-  
22      tion of a Tribe described in paragraph (6) is first  
23      used by a Tribe or is first used pursuant to the  
24      terms of a water use contract with the Tribe—

1           “(A) repayment of that increment’s pro  
 2           rata share of those allocable construction costs  
 3           for the Dolores Project shall be due from the  
 4           Tribe; and

5           “(B) the Tribe shall be responsible for  
 6           bearing that increment’s pro rata share of the  
 7           allocable annual operation, maintenance, and  
 8           replacement costs referred to in paragraph  
 9           (6).”.

10 **SEC. 4. MISCELLANEOUS.**

11       The Colorado Ute Indian Water Rights Settlement  
 12 Act of 1988 (Public Law 100–585) is amended by adding  
 13 at the end the following:

14 **“SEC. 14. NEW MEXICO AND NAVAJO NATION WATER MAT-**  
 15 **TERS.**

16       “(a) ASSIGNMENT OF WATER PERMIT.—Upon re-  
 17 quest of the State Engineer of the State of New Mexico,  
 18 the Secretary shall in a manner, consistent with the appli-  
 19 cable State law, assign, without consideration, to the New  
 20 Mexico Animas-La Plata Project beneficiaries or the New  
 21 Mexico Interstate Stream Commission any portion of the  
 22 Department of the Interior’s interest in New Mexico Engi-  
 23 neer Permit Number 2883, dated May 1, 1956, in order  
 24 to fulfill the New Mexico purposes of the Animas-La Plata  
 25 Project, provided that the permit assignment shall not af-

1   fect the application of the Endangered Species Act of  
2   1973 to the use of the water.

3       “(b) NAVAJO NATION MUNICIPAL PIPELINE.—The  
4   Secretary is authorized to construct a water line to aug-  
5   ment the existing system that conveys municipal water  
6   supplies in an amount not less than 4680 acre feet per  
7   year of the Navajo Nation to the Navajo Indian Reserva-  
8   tion at Shiprock, New Mexico. The Secretary shall comply  
9   with all applicable environmental laws with respect to the  
10  water line. Construction costs allocated to the Navajo Na-  
11  tion for the water line shall not be reimbursable to the  
12  United States.

13       “(c) PROTECTION OF NAVAJO WATER CLAIMS.—  
14  Nothing in this Act shall be construed to quantify or oth-  
15  erwise adversely affect the water rights and the claims of  
16  entitlement to water of the Navajo Nation.

17   **“SEC. 15. TRIBAL RESOURCE FUNDS.**

18       “(a) ESTABLISHMENT.—There is hereby authorized  
19  to be appropriated the total amount of \$40,000,000 for  
20  2 equal annual installment payments to the Tribal Re-  
21  source Funds which the Secretary is authorized and di-  
22  rected to establish for each Tribe. Subject to appropria-  
23  tion, and within 60 days of availability of the appropria-  
24  tion to the Secretary, the Secretary shall allocate and  
25  make payment to the Tribal Resource Funds during the

1 same fiscal years as funds are paid under section 16 of  
2 this Act—

3 “(1) To the Southern Ute Tribal Resource  
4 Fund, in the first year \$10,000,000; in the suc-  
5 ceeding year, \$10,000,000.

6 “(2) To the Ute Mountain Ute Tribal Resource  
7 Fund, in the first year \$10,000,000; in the suc-  
8 ceeding year, \$10,000,000.

9 “(b) ADJUSTMENT.—To the extent that any portion  
10 of such amount is contributed after the period described  
11 above or in amounts less than described above, the Tribes  
12 shall, subject to appropriation Acts, receive, in addition  
13 to the full contribution to the Tribal Resource Funds, an  
14 adjustment representing the interest income as deter-  
15 mined by the Secretary in his sole discretion that would  
16 have been earned on any unpaid amount had that amount  
17 been placed in the fund as set forth in subsection (a).

18 “(c) TRIBAL DEVELOPMENT.—(1) The Secretary  
19 shall, in the absence of an approved tribal investment plan  
20 provided for in paragraph (2), invest the moneys in each  
21 Tribal Resource Fund in accordance with the Act entitled,  
22 ‘An Act to authorize the deposit and investment of Indian  
23 funds’ approved June 24, 1938 (25 U.S.C. 162a). Sepa-  
24 rate accounts shall be maintained for each Tribe’s develop-  
25 ment fund. The Secretary shall disburse, at the request

1 of a Tribe, the principal and income in its resource fund,  
2 or any part thereof, in accordance with a resource acquisi-  
3 tion and enhancement plan approved under paragraph (3).

4 “(2) Each Tribe may submit a tribal investment plan  
5 for all or part of its Tribal Resource Fund as an alter-  
6 native to the investment provided for in paragraph (1).  
7 The Secretary shall approve such investment plan within  
8 60 days of its submission if the Secretary finds the plan  
9 to be reasonable and sound. If the Secretary does not ap-  
10 prove such investment plan, the Secretary shall set forth  
11 in writing and with particularity the reasons for such dis-  
12 approval. If such investment plan is approved by the Sec-  
13 retary, the Tribal Resource Fund shall be disbursed to the  
14 Tribe to be invested by the Tribe in accordance with the  
15 approved investment plan. The Secretary may take such  
16 steps as he deems necessary to monitor compliance with  
17 the approved investment plan. The United States shall not  
18 be responsible for the review, approval, or audit of any  
19 individual investment under the plan. The United States  
20 shall not be directly or indirectly liable with respect to any  
21 such investment, including any act or omission of the  
22 Tribe in managing or investing such funds. The principal  
23 and income from tribal investments under an approved in-  
24 vestment plan shall be subject to the provisions of this

1 section and shall be expended in accordance with an eco-  
2 nomic development plan approved under paragraph (3).

3       “(3) Each Tribe shall submit a resource acquisition  
4 and enhancement plan for all or any portion of its Tribal  
5 Resource Fund to the Secretary. The Secretary shall ap-  
6 prove such investment plan within 60 days of its submis-  
7 sion if the Secretary finds that it is reasonably related to  
8 the protection, acquisition, enhancement, or development  
9 of natural resources for the benefit of the Tribe and its  
10 members. If the Secretary does not approve such plan, the  
11 Secretary shall, at the time of decision, set forth in writing  
12 and with particularity the reasons for such disapproval.  
13 Each Tribe may alter the resource acquisition and en-  
14 hancement plan, subject to the approval of the Secretary  
15 as set forth in this subsection. The Secretary shall not  
16 be directly or indirectly liable for any claim or cause of  
17 action arising from the approval of a resource, acquisition  
18 and enhancement plan or from the use and expenditure  
19 by the Tribe of the principal of the funds and income ac-  
20 cruing to the funds, or any portion thereof, following the  
21 approval by the Secretary of a resource, acquisition and  
22 enhancement plan.

23       “(d) PER CAPITA DISTRIBUTIONS.—Under no cir-  
24 cumstances shall any part of the principal of the funds,  
25 or of the income accruing to such funds, or the revenue

1 from any water use contract, be distributed to any member  
2 of either Tribe on a per capita basis.

3 “(e) LIMITATION ON SETTING ASIDE FINAL CON-  
4 SENT DECREE.—Neither the Tribes nor the United States  
5 shall have the right to set aside the final consent decree  
6 solely because subsection (c) is not satisfied or imple-  
7 mented.

8 **“SEC. 16. COLORADO UTE SETTLEMENT FUND.**

9 “(a) ESTABLISHMENT OF FUND.—There is hereby  
10 established within the Treasury of the United States the  
11 ‘Colorado Ute Settlement Fund.’

12 “(b) AUTHORIZATION OF APPROPRIATIONS.—There  
13 is authorized to be appropriated to the Colorado Ute Set-  
14 tlement Fund such funds as are necessary to complete  
15 construction of the facilities described in subsection  
16 6(a)(1)(A).

17 **“SEC. 17. FINAL SETTLEMENT.**

18 “(a) IN GENERAL.—The construction of the facilities  
19 described in section 6(a)(1)(A), the allocation of the water  
20 supply from those facilities to the Tribes as described in  
21 that section, and the provision of funds to the Tribes in  
22 accordance with sections 15 and 16 shall constitute final  
23 settlement of the tribal claims to water rights on the  
24 Animas and La Plata Rivers in the State of Colorado.

1       “(b) STATUTORY CONSTRUCTION.—Nothing in this  
2 section shall be construed to affect the right of the Tribes  
3 to water rights on the streams and rivers described in the  
4 Agreement, other than the Animas and La Plata Rivers,  
5 or to acquire water rights under the laws of the State of  
6 Colorado.

7       “(c) ACTION BY THE ATTORNEY GENERAL.—The At-  
8 torney General of the United States shall file with the Dis-  
9 trict Court, Water Division Number 7, of the State of Col-  
10 orado, such instruments as may be necessary to request  
11 the court to amend the final consent decree to provide for  
12 the provisions of this Act as in effect after the date of  
13 the enactment of the Colorado Ute Settlement Act Amend-  
14 ments of 1999.

15 **“SEC. 18. TREATMENT OF CERTAIN FUNDS.**

16       “The uncommitted portion of the cost-sharing obliga-  
17 tion of the State of Colorado referred to in section 6(a)(3)  
18 shall be made available to the State of Colorado after the  
19 date of payment of the amount specified in that section  
20 upon the request of the State of Colorado.”.

21 **SEC. 5. STATUTORY CONSTRUCTION.**

22       Unless otherwise explicitly provided, nothing in this  
23 Act shall affect the applicability of any provision of the  
24 Colorado Ute Indian Water Rights Settlement Act of 1988



1 (Public Law 100–585) other than those provisions amend-  
2 ed by this Act.

